

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

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|---------------------------|---|-------------------|
| UNITED STATES OF AMERICA, | § | |
| Plaintiff/Respondent, | § | |
| | § | |
| V. | § | CR. No. C-05-542 |
| | § | C.A. No. C-08-202 |
| | § | |
| DELVIN DEMON MOORE, | § | |
| Defendant/Movant. | § | |

**ORDER GRANTING UNITED STATES’
MOTION TO FILE RESPONSE OUT OF TIME,
ORDER DENYING WITHOUT PREJUDICE MOTION TO CLARIFY, AND
ORDER GRANTING MOVANT’S MOTION FOR EXTENSION OF TIME TO REPLY**

Pending before the Court is Movant’s motion pursuant to 28 U.S.C. § 2255. The United States filed its response to his § 2255 motion in piece-meal fashion, with the final affidavit in support of its response being filed on October 31, 2008. (D.E. 539.) The affidavit does not contain a separate certificate of service. The United States also filed a motion to file its response out of time (D.E. 536), which is hereby GRANTED.

On November 24, 2008, the Clerk received from Moore two documents. (D.E. 540, 542.) The first was a detailed response to the affidavit of AUSA Patti Booth, which had been filed by the United States. Moore’s second November 24, 2008 submission contained the statements of two additional individuals (one sworn statement and one unsworn statement titled an “Affidavit”) (D.E. 541.) Moore has not yet filed a full reply to the United States’ response, however.

Pending before the Court are two subsequent motions by Moore. The first, titled a “Motion to Clarify,” inquires about whether his § 2255 motion is still pending, and also asks that the Court order that an evidentiary hearing be held in this case. The request for a hearing is DENIED WITHOUT PREJUDICE. If the Court determines that a hearing is necessary, one will be held after briefing is complete. As to his request for clarification, Moore has previously been sent a copy of

the docket sheet in this case, and the Court has previously clarified the briefing schedule in the case for him. (See D.E. 534.) To reiterate, his § 2255 motion remains pending before the Court.

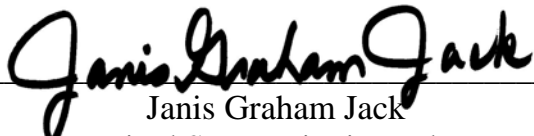
In his second motion, received by the Clerk on December 15, 2008, Moore avers that he did not receive the final affidavit filed by the government in support of its response until November 18, 2008, and he asks for additional time to file his full reply. (D.E. 543.) Particularly in light of the fact that the United States has sought and now received two extensions of time, and in light of the alleged delay in Moore's receipt of the complete response, the Court finds that an extension is warranted. Moore's motion for extension (D.E. 543) is therefore GRANTED. Moore shall file his reply to the entirety of the United States' response not later than Friday, January 16, 2008.

CONCLUSION

As set forth above, the Court ORDERS that:

1. the United States' Supplemental Motion to File Response Out of Time (D.E. 536) is GRANTED and its response will be considered by the Court;
2. Moore's Motion to Clarify (D.E. 542) is DENIED WITHOUT PREJUDICE;
and
3. Moore's Motion for Extension (D.E. 543) is GRANTED. Moore shall file any reply not later than Friday, January 16, 2008.

It is so ORDERED this 22nd day of December, 2008.



Janis Graham Jack
United States District Judge